

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNI-CON FLOORS, INC.)
Plaintiff,)
)
v.) C.A. No.: 05-10463 NG
)
BRICKLAYERS & ALLIED CRAFTSMEN)
UNION, LOCAL 3 – EASTERN)
MASSACHUSETTS)
Defendant.)
)

**AFFIDAVIT OF DEFENDANT'S ATTORNEY, JONATHAN M. CONTI,
IN SUPPORT OF DEFENDANT'S MOTION FOR APPROVAL OF
POST-JUDGMENT TRUSTEE PROCESS**

I, Jonathan M. Conti, am the attorney for Defendant Bricklayers and Allied Craftsmen Union, Local 3- Eastern Massachusetts, in the above-titled matter, and say of my own knowledge in support of this Motion that:

1. A Judgment was entered by this Court in the above case in favor of Defendant Local 3 and against Plaintiff Uni-Con on May 9, 2006, enforcing an award from a joint Arbitration Board that ruled in favor of Defendant Local 3 and against Plaintiff Uni-Con Floors, Inc. A copy of the Judgment is attached hereto as Exhibit 1.
2. On March 10, 2005, Plaintiff filed a Complaint seeking to vacate the Arbitration Board's Award.
3. On November 16, 2005, Defendant filed a Motion for Summary Judgment, seeking to have Plaintiff's Complaint to vacate the Arbitration Board's Award dismissed, and to enforce the Arbitration Board's Award.

4. On April 19, 2006, Magistrate Judge Leo T. Sorokin issued a Report and Recommendation to grant Local 3's Motion for Summary Judgment, and on May 8, 2006, United States District Court Judge Nancy Gertner issued an Order granting Local 3's motion for Summary Judgment and thereby enforcing the Arbitration Board's Award.
5. On May 9, 2006, Judge Gertner issued a Judgment in favor of Defendant and thereby dismissed Plaintiff's action to vacate the Arbitration Board's Award.
6. Defendant served a post-judgment Request for Production of Documents upon Plaintiff Uni-Con as well on American Floor Covering, Inc., the company the Arbitration Board found Uni-Con deliberately employed to circumvent its obligations under its collective bargaining agreement with Local 3, requesting documents related to work performed by American Floor Covering, Inc., on the University of Massachusetts-Dartmouth project (hereinafter referred to as the "UMass-Dartmouth project").
7. In August 2006, Plaintiff and American Floor Covering, Inc., in response to Defendant's Request for Production of Documents, provided documentation that establishes that American Floor Covering, Inc.'s employees worked a total of 3640 hours as tile setters and tile finishers on the UMass-Dartmouth project.
8. Had Plaintiff not used American Floor Covering, Inc. to perform the tile work on the UMass-Dartmouth project to avoid having to employ members of Local 3 pursuant to the terms of its collective bargaining agreement, Local 3's

members would have worked a total of 3640 hours and earned a total, in wages and fringe benefits, of \$184,463.10.

9. The Arbitration board's Award, which the Court enforced in its Order for Judgment, provides that "if it is necessary for the Union and/or the Trustees of the joint Trust Funds to institute court action to enforce this Award or to successfully defend an action by Uni-Con Floors, Inc., to vacate this Award, Uni-Con Floors, Inc. shall pay any accountants' and attorneys' fees incurred by the Union and/or Fund Trustees, plus the cost of litigation, which may occur as a result of the court action."
10. Defendant Local 3's attorneys' fees and costs in litigating this matter total \$7,639.90. An itemized list of fees and costs is attached hereto as Exhibit 2.
11. Trustee Bridgewater-Raynham Regional School District has a business address of 777 Pleasant Street, Raynham, MA 02767.
12. Trustee Bacon Construction, Inc. is a corporation organized in Rhode Island with a business address of 241 Narragansett Park Drive, East Providence, RI 02916, and which is registered to conduct business in the Commonwealth of Massachusetts, and which has a registered agent located in Seekonk, Massachusetts.
13. Trustee Bridgewater-Raynham Regional School District entered into a contract with General Contractor Bacon Construction, Inc., to construct a new Bridgewater-Raynham Regional High School.

14. Bacon Construction Co., Inc. entered into a subcontract with Plaintiff Uni-Con Floors, Inc., to have Uni-Con perform the masonry work on the new Bridgewater-Raynham Regional High School.
15. Uni-Con started working on the new Bridgewater-Raynham Regional High School project on or about March 27, 2006, and, upon information and belief, will continue working on the project for an additional four months.
16. Upon information and belief, Bridgewater-Raynham Regional School District and/or Bacon Construction Co., Inc., are holding funds for work performed and/or to be performed by Uni-Con on the new Bridgewater-Raynham Regional High School project.
17. The undersigned certifies that I know of no liability insurance available to satisfy the Judgment.

SIGNED UNDER THE PENALTIES OF PERJURY THIS 29th DAY OF AUGUST, 2006.

/s/ Jonathan M. Conti
Jonathan M. Conti

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNI-CON FLOORS, INC.,)
Plaintiff,)
)
v.) C.A. No. 05-10463NG
)
MASSACHUSETTS BRICKLAYERS)
AND ALLIED CRAFTSMAN UNION,)
LOCAL 3,)
Defendant.)

GERTNER, D.J.:

JUDGMENT

For the reasons stated in the Court's Order of May 8, 2006,
and Magistrate Judge Sorokin's Report and Recommendation of April
19, 2006, I hereby GRANT the motion for summary judgment
[document #6] in favor of defendant. This action is hereby
DISMISSED.

SO ORDERED.

Dated: May 9, 2006

/s/ NANCY GERTNER, U.S.D.J.

Fees	<u>Client</u>	<u>Trans Date</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>
	123.022	03/23/2005	215.00	2.75	591.25 Preparation of Federal Court Complaint Uni-Con Floors, Corp.
	123.022	05/10/2005	215.00	2.00	430.00 Preparation of Answer and Counter Claim to Enforce Award Uni-Con Floors, Corp.
	123.022	07/29/2005	195.00	0.50	97.50 Review file in preparation for summary judgment Uni-Con Floors, Corp.
	123.022	08/02/2005	195.00	2.00	390.00 Preparation of Summary Judgment brief Uni-Con Floors, Corp.
	123.022	08/09/2005	195.00	2.00	390.00 Preparation of Summary Judgment brief Uni-Con Floors, Corp.
	123.022	11/08/2005	195.00	2.50	487.50 Preparation of Summary Judgment brief Uni-Con Floors, Corp.
	123.022	11/11/2005	195.00	3.00	585.00 Draft Memorandum in Support of Summary Judgment Motion, Motion for Summary Judgment, Affidavit of C. Raso, Affidavit of Michael Feinberg, Statement of Undisputed Facts, Local Rule 16.1 Certification, and Notice of Appearance Uni-Con Floors, Corp.
	123.022	11/14/2005	195.00	1.00	195.00 Edit Summary Judgment documents; Prepare exhibits; Telephone conference with Charles Raso Uni-Con Floors, Corp.
	123.022	11/15/2005	195.00	0.50	97.50 Final edit of Summary Judgment documents; Sent affidavit to Charles Raso Uni-Con Floors, Corp.
	123.022	11/16/2005	195.00	0.50	97.50 Telephone conference with Attorney Fleury's office; Review Summary Judgment documents before filing Uni-Con Floors, Corp.
	123.022	12/14/2005	195.00	1.00	195.00 Draft Joint Scheduling Report and fax to Attorney Fleury; Draft Settlement letter offer to Fleury Uni-Con Floors, Corp.
	123.022	12/20/2005	195.00	0.50	97.50 Draft Defendant's Scheduling Report and file with the Court Uni-Con Floors, Corp.
	123.022	12/28/2005	195.00	2.50	487.50 Review Summary Judgment brief and Scheduling Conference report; Attend Scheduling Conference Uni-Con Floors, Corp.
	123.022	01/10/2006	195.00	3.00	585.00 Conference with Attorney Feinberg; Review file and Uni-Con's Opposition for Motion for Summary Judgment; Research; Draft memo to Attorney Feinberg; Telephone conference with Court clerk Uni-Con Floors, Corp.
	123.022	01/11/2006	195.00	1.50	292.50 Telephone conference with Court clerk; Research for Motion to Strike Uni-Con Floors, Corp.
	123.022	01/12/2006	195.00	0.50	97.50 Research; Conference with Attorney Feinberg regarding Striking of Opposition and Reply Memorandum Uni-Con Floors, Corp.
	123.022	01/13/2006	195.00	3.00	585.00 Draft Motion to Strike, Opposition to Motion for Summary Judgment and Reply Memorandum of Law in Support of Motion for Summary Judgment Uni-Con Floors, Corp.
	123.022	01/17/2006	195.00	2.00	390.00 Edit Motion to Strike and Reply Memorandum of Law Uni-Con Floors, Corp.
	123.022	01/18/2006	195.00	0.50	97.50 Letter to C. Raso regarding affidavit; Prepare exhibits Uni-Con Floors, Corp.
	123.022	04/20/2006	195.00	0.50	97.50 Review Magistrate Judge's Decision; Letter to C. Raso Uni-Con Floors, Corp.
	123.022	05/11/2006	195.00	1.00	195.00 Draft Notice of Deposition and list of documents for Uni-con pro duce Uni-Con Floors, Corp.
	123.022	06/06/2006	195.00	1.00	195.00 Review arbitration award and file in preparation for deposition Uni-Con Floors, Corp.
	123.022	06/07/2006	195.00	0.50	97.50 Draft letter and Notice of Deposition Uni-Con Floors, Corp.
	123.022	06/15/2006	195.00	0.50	97.50 Draft letter to Attorney Fleury regarding records and deposition Uni-Con Floors, Corp.
	123.022	06/16/2006	195.00	0.50	97.50 Edit letter to Fleury Uni-Con Floors, Corp.
	123.022	07/10/2006	195.00	1.00	195.00 Draft Subpoena for American Floor Company; Conference with Attorney Feinberg; Letter to American Floor Company Uni-Con Floors, Corp.
	123.022	07/24/2006	195.00	0.50	97.50 Letter and telephone confernce with Attorney Fleury Uni-Con Floors, Corp.

Total for Fees	Billable	34.00	6670.00
	Non-billable	2.75	591.25
	Total	36.75	7261.25

Advances

123.022	03/24/2005	250.00 Filing Fees/ (38) Clerk, US District Court Uni-Con Floors, Corp.
123.022	07/17/2006	128.65 Service of Witness Subpoena: Commonwealth of Massachusetts, Bristol County Sheriff's Office Uni-Con Floors, Corp.

Client	Trans Date	Rate	Hours to Bill	Amount
Total for Advances			0:00	378:65
GRAND TOTALS				
	Billable	34.00	7048.65	
	Non-billable	2.75	591.25	
	Total	36.75	7639.90	